

DEPARTMENT OF MENTAL HEALTH

POLICY / PROCEDURE



SUBJECT: PERSONAL SEARCHES	POLICY NO. 202.10	EFFECTIVE DATE 10/01/89	PAGE 1 of 4
APPROVED BY: Original Signed by: ROBERTO QUIROZ Director	SUPERSEDES 102.10	ORIGINAL ISSUE DATE 08/27/80	DISTRIBUTION LEVEL(S) 2

PURPOSE:

- 1.1 To provide Department of Mental Health (DMH) policy and guidelines regarding personal searches while:
 - 1.1.1 ensuring the protection and safety of all persons involved, and
 - 1.1.2 protecting the Constitutional and statutory rights to privacy, dignity and freedom from unreasonable search and seizure in any mental health program.

POLICY:

- 2.1 Searches may be conducted only when there is probable cause to believe that the person has in his/her possession a weapon or contraband, and there is no less intrusive way of handling the situation. Searches may not be conducted on a programmatic or routine basis. Probable cause may be any of the following:
 - 2.1.1 The individual has a past recent history (i.e., within six months) of illegal drug use and there is reason to believe he/she may attempt to smuggle such drugs into the facility.
 - 2.1.2 The individual is suicidal and/or homicidal and there is reason to believe he/she may covertly bring dangerous objects into the institution.
 - 2.1.3 The individual has, in the past, been caught bringing illegal drugs into the institution or having such drugs in his/her possession while there.
 - 2.1.4 The individual appears to be under the influence of an illegal drug.
 - 2.1.5 The individual's drug usage and/or possession while in the institution has been reported to the facility staff.
- 2.2 The search must be made in a reasonable manner, with respect for the individual's dignity and privacy.
- 2.3 The individual must be given an opportunity to be present during all inspection of his/her belongings.
- 2.4 The facility's policies regarding searches should be made known to all clients upon admission.

DEPARTMENT OF MENTAL HEALTH

POLICY / PROCEDURE



SUBJECT: PERSONAL SEARCHES	POLICY NO. 202.10	EFFECTIVE DATE 10/01/89	PAGE 2 of 4
--------------------------------------	-----------------------------	--------------------------------------	-----------------------

- 2.5 The permission of the individual should be secured prior to any search. If the person refuses and the search is conducted, it shall be considered a denial of rights per Welfare and Institutions Code (W&I), Title 9, Sections 865.2, 865.3 and provisions therein shall be followed.
- 2.6 If a search is conducted, the following items shall be documented in the person's treatment record:
- 2.6.1 All facts constitution probable cause to conduct the search.
- 2.6.2 The scope of the search and the manner in which it was conducted (who conducted it, witnesses present, what was search, items seized, etc.).
- Such record shall be open to inspection by the County Patient's Rights Advocate.
- 2.7 Nothing in this policy precludes the inventorying of the person's possessions upon admission, providing the person consents to it.
- 2.8 Any confiscated items may not be turned over to the police unless in response to a warrant or under the provisions of W&I Code, Sections 5004.5 and 5328.4.
- 2.9 A search may be conducted only to the extent required in order to find the dangerous contraband (for example: if a gun is suspected to be in the possession of a person, the staff may search a locker, but they can not open the persons wallet).
- 2.10 "Pat-down" searches of an individual's outer clothing are allowable only under the conditions listed above.
- 2.10.1 A pat-down or "frisk" is intended to discover whether an individual is carrying on his/her person any weapon or contraband or other items inimical to the peace and security of the facility environment. If, in the course of a pat-down on the external clothing, a hard, suspicious object(s) is discovered which reasonable be, for example, a weapon or bottle of pills, the staff person conducting the search may remove the object(s) for closer inspection. Staff are not authorized to search pockets unless, during the pat-down of the person's outer clothing, they feel an object which may be a weapon or dangerous drug.

DEPARTMENT OF MENTAL HEALTH

POLICY / PROCEDURE



SUBJECT: PERSONAL SEARCHES	POLICY NO. 202.10	EFFECTIVE DATE 10/01/89	PAGE 3 of 4
--------------------------------------	-----------------------------	--------------------------------------	-----------------------

Put-down searches may be conducted only by treatment staff who have been specially trained to perform such duties and who are of the same gender as the individual being searched.

- 2.11 "Strip searches" and "skin searches", whereby the person's clothing is removed and the person is subject to an inspection of all or part of his/her body, whether visual or manual, may be conducted under the following circumstances if necessary for safety:
 - 2.11.1 There is sufficient cause to believe the individual is harboring dangerous contraband on his/her person.
 - 2.11.2 There is great likelihood the individual will personally use such contraband to seriously harm him/herself or others.
 - 2.11.3 The justification for the search, including the basis for concluding 2.11.1 and 2.11.2 above, is entered into the treatment record.
 - 2.11.4 There is adequate documentation in the treatment record to support the above justification.
 - 2.11.5 All less intrusive methods of discovery have been tried and the attempts documented.
 - 2.11.6 Written approval of the search has been given and so documented within twenty four (24) hours by the Medical Director of the facility.
 - 2.11.7 The inspection is conducted in private only by a licensed physician. Two staff persons should be in attendance. If the physician and the person are of different genders, then the other staff member should be of the same gender as the person being examined. No other persons should be present.
 - 2.11.8 The reasons for the search are made known to the person.
 - 2.11.9 All other provisions of this policy are met.
 - 2.11.10 Further, even if all the above criteria have been met, voluntary persons shall have an absolute right to refuse to submit to any "body" or "strip" search. They shall be advised of this fact prior to the search and shall be given the option of leaving the facility rather than submitting to the search.

DEPARTMENT OF MENTAL HEALTH

POLICY / PROCEDURE



SUBJECT: PERSONAL SEARCHES	POLICY NO. 202.10	EFFECTIVE DATE 10/01/89	PAGE 4 of 4
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2.12 Any facility that violates this policy shall be subject to appropriate sanctions.

AUTHORITY: Welfare and Institutions Code, Sections 500.4.5, 5325, 5326 and 5328.4
California Administrative Code, Title 9, Sections 865.2 and 985.3